



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

69

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/971,135	10/04/2001	Lance W. Russell	10012453-1	1637
7590	04/01/2005		EXAMINER	
HEWLETT-PACKARD COMPANY Intellectual Property Administration P.O. Box 272400 Fort Collins, CO 80527-2400			LANE, JOHN A	
			ART UNIT	PAPER NUMBER
			2188	

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

09/971,135

**Applicant(s)**

RUSSELL, LANCE W.

**Examiner**

Jack A Lane

**Art Unit**

2188

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 March 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 12-14.

Claim(s) objected to: None.

Claim(s) rejected: 1,11 and 15-29.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
 13.  Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because:

Amended claim 21 now includes limitations not previously considered.

The Examiner's simple request to ask the inventor/attorney of record for prior art has repeatedly gone unanswered. Applicant's Remarks addressing this issue have been considered, however, are not found persuasive. Applicant supports his contention to not answer the request is, in part, based on the following:

Indeed, the fact that such a showing (examiner argument for applicant answering the request) cannot be made is evidenced by the relevant prior art that the Examiner has cited in his rejections of the claims (i.e., the fact that the Examiner was able to locate the cited prior art demonstrates that that (sic) the claimed subject matter can be adequately searched)

In response, the reference to Morioka (6,631,447) (applied to claims 1-24) was only found when reviewing related application 09/971,989. This prior art was found by the Examiner in charge of the related application. Thus, the fact that a reference applicable to the claims existed and was known to Applicant prior to the final Office action supports the Examiner's request for prior art. For whatever reason, the Examiner either overlooked Applicant's IDS filed prior to the final Office action or there was some problem with the database and the IDS was not available. In any event, the Morioka reference was not found by the present Examiner and is prior art under 102.

The Examiner also requested a discussion of prior art found in the background section (see section 2, final Office action) as it applies to independent and dependent claim limitations. Contrary to Applicant's assertions in the Remarks:

[T]he Examiner's request for "any documentation know to qualify for (sic) prior art" is not narrowly defined

The Examiner is being quite specific when asking for references qualifying as prior art under 102 or 103 with respect to the independent and dependent claim limitations.

Furthermore, most of the background art (other than patent 6,157,955) may be based on printed publications or common knowledge. The Examiner has no way of knowing without input from Applicant. For example, the background section discusses prior art that appears particularly relevant to new claims 25-29:

[N]etwork infrastructure services conventionally are implemented as one or more software modules executing on general-purpose computers

and;

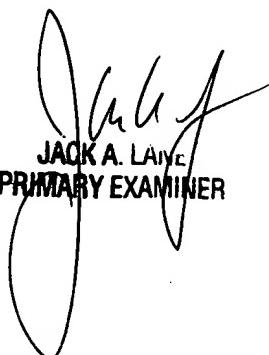
A general-purpose computer typically provides a complete operating environment for network infrastructure applications, including all of the services provided by the operating system.

and;

New network infrastructure applications may be loaded and, generally, existing network infrastructure applications may be updated on a general-purpose computer simply by loading the new application or application update

The above background art appears to discuss a network infrastructure function/network service application/service module (kernel) that can be loaded into the computer to update or replace existing software modules

Additionally, applicant should note claims 25-29 were inadvertently missing from the prior art rejections of record.



JACK A. LANE  
PRIMARY EXAMINER